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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,526	08/19/2003	Brian M. Wilk	27087/39520	4491
4743	7590	12/23/2005	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606				MENDIRATTA, VISHU K
ART UNIT		PAPER NUMBER		
				3711
DATE MAILED: 12/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,526	WILK ET AL.	
	Examiner	Art Unit	
	Vishu K. Mendiratta	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11 October 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 4,7-17,20,21 and 23-44 is/are pending in the application.
- 4a) Of the above claim(s) 27-44 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 4,7-17,20,21 and 23-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

Claim Rejections - 35 USC § 103

1. Claims 7-9, 13,20, 23,24 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McKay (4005543).

McKay teaches a game figure (10), having a base (74), a mechanically functional combat component (12) moveable with respect to the figure, the character moveable on surface (14), a second portion (30) moveably connected to move from one position to another (Fig.3-5), a spring (26) to bias the second portion from 2nd to 1st position, and a distance measuring device indicating the distance moved (3:44-54) having a wheel (14) fixedly secured to an axle (17) and a device coupled to axle for indicating rotation of axle (3:44-54).

Applicant might argue that physical engagement is not possible between the two game character combat components (12) for the reason that the combat components are not extended outside the figure. Applicant is advised to see 4:15 indicating possibility of various shapes of the component 12 as aesthetic choices.

In order to suit the desired shape, it would have been obvious to make changes in shape of the combat component. One of ordinary skill in art at the time the invention was made would have suggested modifying the component to engage with other game piece. For the purpose of argument the game pieces can be placed in various orientations to engage the combat components to come in contact with each other.

The applicant might argue that spoiler 74 is not a base. The examiner takes the position that the spoiler is connected to the base and a part of the base (Fig.7). However disposing a distance-measuring device anywhere in the body of the character would be

a design choice for convenient viewing of the device. One of ordinary skill in art at the time the invention was made would have suggested disposing any where in the base for convenient viewing.

2. Claims 4,10,11,12, 20 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McKay (4005543) in further view of Kulesza (4280300).

McKay teaches a game figure (10), having a base (74), a mechanically functional combat component (12) moveable with respect to the figure, the character moveable on surface (14), a second portion (30) moveably connected to move from one position to another (Fig.3-5), a spring (26) to bias the second portion from 2nd to 1st position, and a distance measuring device indicating the distance moved (3:44-54).

Applicant might argue that physical engagement is not possible between the two game character combat components (12) for the reason that the combat components are not extended outside the figure. Applicant is advised to see 4:15 indicating possibility of various shapes of the component 12 as aesthetic choices.

In order to suit the desired shape, it would have been obvious to make changes in shape of the combat component.

One of ordinary skill in art at the time the invention was made would have suggested modifying the component to engage with other game piece. For the purpose of argument the game pieces can be placed in various orientations to engage the combat components to come in contact with each other.

The applicant might argue that spoiler 74 is not a base. The examiner takes the position that the spoiler is connected to the base and a part of the base (Fig.7). However disposing a distance-measuring device anywhere in the body of the character would be a design choice for convenient viewing of the device.

One of ordinary skill in art at the time the invention was made would have suggested disposing any where in the base for convenient viewing.

Mckay teaches all limitations except that it does not teach an audible indication of distance measured in addition to a visual indicator.

Kulesza teaches a figure having an audible indicator disposed in a chamber (22) for measuring distance (abstract, 4:14-29) in addition to a visual indicator.

Children are especially attracted towards amusement devices that produce sound.

Audible indications in addition to visual indications also make the devices acceptable for visually challenged players. In order to make the device universally acceptable and promote the sale, it would have been obvious to provide audible indicator in addition to visual indicators.

One of ordinary skill in art at the time the invention was made would have suggested audible indicator in addition to visual indicators of traveled distance for making the device universal.

Mckay teaches all limitations except that it does not teach a pinion gear fixedly attached to axle.

Kulesza teaches a pinion (112) fixedly attached to axle (50).

Amusement art area is a very competitive area and in order to promote the game it would have been obvious to include a commonly known pinion driven device .

One of ordinary skill in art at the time the invention was made would have suggested including a gear driven device for increasing the amusement value.

3. Claims 14-17 rejected under 35 U.S.C. 103(a) as obvious over McKay (4005543) in view of Althaus (3387778).

McKay teaches a game figure (10), having a base (74), a mechanically functional combat component (12) moveable with respect to the figure, the character moveable on surface (14), a second portion (30) moveably connected to move from one position to another (Fig.3-5), a spring (26) to bias the second portion from 2nd to 1st position, and a distance measuring device indicating the distance moved (3:44-54).

Applicant might argue that physical engagement is not possible between the two game character combat components (12) for the reason that the combat components are not extended outside the figure. Applicant is advised to see 4:15 indicating possibility of various shapes of the component 12 as aesthetic choices.

In order to suit the desired shape, it would have been obvious to make changes in shape of the combat component.

One of ordinary skill in art at the time the invention was made would have suggested modifying the component to engage with other game piece. For the purpose of argument the game pieces can be placed in various orientations to engage the combat components to come in contact with each other.

The applicant might argue that spoiler 74 is not a base. The examiner takes the position that the spoiler is connected to the base and a part of the base (Fig.7). However disposing a distance-measuring device anywhere in the body of the character would be a design choice for convenient viewing of the device.

One of ordinary skill in art at the time the invention was made would have suggested disposing any where in the base for convenient viewing.

Mckay teaches all limitations except that it does not teach a rotary display of distance indicia mechanism having wheel, axle, pinion, rack arrangement.

Althaus teaches a display mechanism having an axle (42), a wheel (40) fixedly secured to the axle, a device (24) coupled to the axle indicating progressive rotation of the axle, a pinion gear (46) fixedly secured to the axle, a circular rack (48) engaging a gear pinion (46), wherein the circular *including* a surface (registering wheels) having circumferentially spaces indicia (30) viewed through an aperture (22) on a face plate.

Amusement art area is a very competitive area and in order to promote the game it would have been obvious to include a commonly known gear driven device for alternately displaying sequential rotating indicia.

One of ordinary skill in art at the time the invention was made would have suggested including a gear driven display device for increasing the amusement value.

4. Claims 21, 25,26 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over McKay (4005543) in view of Kulesza (4280300) and further in view of Althaus.

McKay teaches a game figure (10), having a base (74), a mechanically functional combat component (12) moveable with respect to the figure, the character moveable on surface (14), a second portion (30) moveably connected to move from one position to another (Fig.3-5), a spring (26) to bias the second portion from 2nd to 1st position, and a distance measuring device indicating the distance moved (3:44-54).

Applicant might argue that physical engagement is not possible between the two game character combat components (12) for the reason that the combat components are not extended outside the figure. Applicant is advised to see 4:15 indicating possibility of various shapes of the component 12 as aesthetic choices.

In order to suit the desired shape, it would have been obvious to make changes in shape of the combat component.

One of ordinary skill in art at the time the invention was made would have suggested modifying the component to engage with other game piece. For the purpose of argument the game pieces can be placed in various orientations to engage the combat components to come in contact with each other.

The applicant might argue that spoiler 74 is not a base. The examiner takes the position that the spoiler is connected to the base and a part of the base (Fig.7). However disposing a distance-measuring device anywhere in the body of the character would be a design choice for convenient viewing of the device.

One of ordinary skill in art at the time the invention was made would have suggested disposing any where in the base for convenient viewing.

Mckay teaches all limitations except that it does not teach an audible indication of distance measured in addition to a visual indicator.

Kulesza teaches a figure having an audible indicator disposed in a chamber (22) for measuring distance (abstract, 4:14-29) in addition to a visual indicator.

Children are especially attracted towards amusement devices that produce sound.

Audible indications in addition to visual indications also make the devices acceptable for visually challenged players. In order to make the device universally acceptable and promote the sale, it would have been obvious to provide audible indicator in addition to visual indicators.

One of ordinary skill in art at the time the invention was made would have suggested audible indicator in addition to visual indicators of traveled distance for making the device universal.

Mckay teaches all limitations except that it does not teach a pinion gear fixedly attached to axle.

Kulesza teaches a pinion (112) fixedly attached to axle (50).

Amusement art area is a very competitive area and in order to promote the game it would have been obvious to include a commonly known pinion driven device .

One of ordinary skill in art at the time the invention was made would have suggested including a gear driven device for increasing the amusement value.

Mckay and Kulesza teach all limitations except that it does not teach a rotary display of distance indicia mechanism having wheel, axle, pinion, circular rack arrangement.

Althaus teaches a display mechanism having an axle (42), a wheel (40) fixedly secured to the axle, a device (24) coupled to the axle indicating progressive rotation of the axle, a pinion gear (46) fixedly secured to the axle, a circular rack (48) engaging a gear pinion (46), wherein the circular *including* a surface (registering wheels) having circumferentially spaces indicia (30) viewed through an aperture (22) on a face plate. Amusement art area is a very competitive area and in order to promote the game it would have been obvious to include a commonly known gear driven device for alternately displaying sequential rotating indicia.

One of ordinary skill in art at the time the invention was made would have suggested including a gear driven display device for increasing the amusement value.

Response to Arguments

5. Applicant's arguments filed 10/11/05 have been fully considered but they are not persuasive.

Applicant argues (page 13) "plane 12 is not functional".

Examiner points at McKay 2:15-25 clearly indicating an intended use of game piece for combat.

Applicant argues (page 13) "plane 12 is not configured to engage in simulated battle".

Examiner takes the position that plane 12 gets propelled from the vehicle and capable of being used in battle.

Applicant argues (page 14) latch 30 not extending beyond the perimeter of car and not suggested obvious to modify.

Examiner points at Fig.6 indicating latch 30 is clearly outside the perimeter and capable of hitting any object. Modifying latch would have been a design choice.

Applicant argues (page 14) that combination has no motivation for having audible indicators.

Examiner takes the position that sound indicators have amusement value and common in the art area. In order to attract potential buyers, it would have been obvious to provide audible indicators.

Applicant argues (page 16) Althaus does not teach measuring device of claim 14.

Examiner has explained

Examiner takes the position that the drive arrangement of applicant is a design choice.

Examiner refers to previous office action for any other arguments.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K. Mendiratta whose telephone number is (571) 272-4426. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vishu K Mendiratta
Primary Examiner
Art Unit 3711

VKM
December 12, 2005